

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

KEAH TINGLER,

Plaintiff : No. 1:19-CV-1552

v.

Judge Jones

**COMMONWEALTH OF
PENNSYLVANIA and
PENNSYLVANIA STATE
SENATE,**

Defendants :

Electronically Filed Document

Complaint Filed 09/09/19

BRIEF IN SUPPORT OF MOTION TO DISMISS THE COMPLAINT

The Plaintiff filed a Title VII lawsuit against the Commonwealth of Pennsylvania and the Pennsylvania State Senate, based on the incorrect belief that the Commonwealth of Pennsylvania was her employer. However, Plaintiff has failed to effectuate proper service on the Commonwealth; as such, the case must be dismissed against it.

PROCEDURAL AND FACTUAL HISTORY

Plaintiff worked in the Security Office and Document Room for over seventeen years.¹ Doc. 1, ¶¶ 15-16. She claims that her supervisor, a Justin Ferrante, harassed her repeatedly. *Id.* at ¶ 17. Following her transfer to the document room, she was subject to retaliation, which caused her to leave her employment. *Id.* at ¶¶ 19-23. On September 9, 2019, the Plaintiff filed her

¹ Plaintiff alleges that she worked “for [both] Defendants.” Doc. 1, ¶ 15.

Complaint (Doc. 1), listing as Defendants the Pennsylvania State Senate and the Commonwealth of Pennsylvania. Doc. 1-1. However, the attorney listed under “Defendants” was Attorney Adam Santucci of McNees, Wallace, and Nurick, LLC (*id.*), who does not represent the Commonwealth in this matter. Doc. 8. The Plaintiff’s Summons refers the Court to the Complaint for Defendants’ names and addresses (Doc. 2); the Complaint lists the Commonwealth’s address as 89e Capitol East Wing in Harrisburg, which appears to be the same address as that listed for the Senate. *See* Doc. 1, Caption. The Pennsylvania Office of Attorney General received a copy of the Plaintiff’s Complaint on November 4, 2019. *See* Exhibit A.

QUESTION PRESENTED

1. Should the Plaintiff’s Complaint be dismissed against the Commonwealth of Pennsylvania, as the Plaintiff has failed to properly serve it?

Suggested Answer: Yes.

ARGUMENT

Federal Rule of Civil Procedure 4 governs service of a complaint, with Rule 4(c)(1) noting, “A summons must be served with a copy of the complaint.” “[T]he party asserting the validity of service bears the burden of proof on that issue.” *Grand Entertainment Group, Ltd., v. Star Media Sales, Inc.*, 988 F.2d 476, 488 (3d Cir. 1993) (internal citation omitted). If a court determines that process has not

been proper, the court may “either dismiss the plaintiff’s complaint for failure to effect service or to simply quash service of process.” *Umbenhauer v. Woog*, 969 F.2d 25, 30 (3d Cir. 1992).

To effectuate proper service on a state or local government, it must be served by either “delivering a copy of the summons and of the complaint to its chief executive officer” or by “serving a copy of each in the manner prescribed by that state’s law for serving a summons or like process on such a defendant.” FED. R. CIV.P. 4(j)(2). Furthermore, the Pennsylvania Rules of Civil Procedure indicate that service of process upon the Commonwealth must “be made at the office of the defendant *and* the office of the attorney general by handing a copy to the person in charge thereof.” PA. R. CIV.P. 422(a) (emphasis added).

In this case, the Plaintiff has failed to effectuate proper service. *First*, the only record of service upon “the Commonwealth” appears to be a document purporting to show that the Pennsylvania Office of Attorney General received a copy of the summons on November 4, 2019. *See* Exhibit A. There is no indication that the “chief executive officer” was delivered a copy of the summons or the complaint, as required by FED. R. CIV.P. 4(j)(2). *Second*, there is no indication that the Plaintiff made service “at the office of the defendant *and* the office of the attorney general.” PA. R. CIV.P. 422(a) (emphasis added). Since the only evidence is that the Pennsylvania Office of Attorney General received a copy of the

summons and complaint, it thus follows that “the office of the defendant” could not have been served simultaneously, unless the Plaintiff is claiming that the Office of Attorney General and the Commonwealth are one and the same. But this argument would be contradictory to the addresses listed on her own Complaint, which sets forth the “Commonwealth’s” address as 89e Capitol East Wing in Harrisburg, which is the same address as that listed for the Pennsylvania State Senate. And there is no indication that she even served “the Commonwealth” at this address, since there is no return of service on the docket. *See Docket*. Thus, the Plaintiff has failed to effectuate proper service, and the Court should dismiss the Commonwealth as a party to this case.

CONCLUSION

Because the Plaintiff has failed to effectuate proper service against the Commonwealth of Pennsylvania, it should be dismissed from this action.

Respectfully submitted,

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Date: December 18, 2019

**Counsel for Defendant Commonwealth
of Pennsylvania**

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th of December, 2019, I caused to be served a true and correct copy of the foregoing document to the following via ECF:

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Deputy Attorney General**